PENNSYLVANIA RAILROAD COMPANY *v.* CARR ET AL., PARTNERS, DOING BUSINESS AS ISAAC W. CARR & COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

No. 578. Argued April 9, 10, 1917.—Decided April 30, 1917.

Decided on authority of *Pennsylvania R. R. Co.* v. *Olivit Brothers, ante,* 574.

88 N. J. L. 235, affirmed.

THE case is stated in the opinion.

Mr. Frederic D. McKenney, with whom *Mr. Albert C. Wall, Mr. John A. Hartpence* and *Mr. John Spalding Flannery* were on the briefs, for plaintiff in error.

Mr. Edward P. Stout, with whom *Mr. George S. Hobart* was on the briefs, for defendants in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action in seven counts praying for damages caused by delay in the delivery of certain watermelons received for shipment and accepted by an initial carrier at certain places in the State of Georgia to be transported to Jersey City, New Jersey, and transferred in good condition to defendant's line at Edgemoor, Delaware, a point on the route.

A violation of the contract of carriage is charged in that the melons were not transported within a reasonable time, by reason of which a large part of them was lost and the rest delivered in a damaged condition.

The defenses were denials of the allegations of the complaint and an averment that the delay in delivery was caused by a strike on the road, for which cause, under the bills of lading issued by the initial carrier pursuant to the Interstate Commerce Act, defendant was exempt from liability for damages. This was one of the defenses in No. 577, with which this case was submitted.

Judgment was entered for plaintiff by consent and that plaintiff's damages be assessed at $1,841.13, "reserving to defendant the right to reduce said judgment in accordance with its exceptions and objections pertaining to the measure of damages and without prejudice to defendant to appeal from said judgment pursuant to law."

The judgment was affirmed by the Court of Errors and Appeals. 88 N. J. L. 235. Indeed, it was upon the opinion in the latter case that the Court of Errors and Appeals decided No. 577.

On the authority of No. 577 the motion to dismiss which is made is overruled and the judgment is

Affirmed.